P24971.A02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	: Mathias SCHAFFORZ	Confirmation No. 7973
Serial No	: 10/849,795	Group Art Unit: 1731
Filed	: May 21, 2004	Examiner: J. B. Edel
For	: METHOD AND DEVICE FOR OPERATING A MACHINE OF THE TOBACCO PROCESSING INDUSTRY	

ELECTION WITH TRAVERSE

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window, Amendment
Randolph Building
401 Dulany Street
Alexandria VA 22314

Sir:

In response to the Examiner's restriction requirement of February 23, 2007, the time set for response being the longer of one month or 31 days, i.e., March 26, 2007, Applicant hereby elects the invention of Group II directed to claims 13-31 with traverse.

In the instant Official Action, the Examiner indicated that all claims (i.e., claims 1-31) were subject to restriction under 35 U.S.C. § 121. The Examiner restricted the claimed invention into Group I, including claims 1-12, and drawn to a process of operating a machine, classified in class 131, subclass 58, and Group II, including claims 13-31, and drawn to a device/apparatus for feeding wrapping materials, classified in class 131, subclass 282.

The Examiner asserted that the inventions of Groups I and II were related as process and apparatus for its practice. The Examiner also asserted that the invention

groups are distinct from each other under M.P.E.P. § 806.05(e).

Applicant respectfully submits that the instant restriction requirement is improper at least because the Examiner has omitted one of the two criteria for a proper restriction requirement now established by the U.S. Patent and Trademark Office policy. That is, as set forth in M.P.E.P. § 803, "an appropriate explanation" must be advanced by the Examiner as to the existence of a "serious burden" if the restriction requirement were not required.

While the Examiner has alleged possible distinctions between the identified groups of invention, the Examiner has not shown that a concurrent examination of these groups would present a "serious burden." In fact, the Examiner has failed to specify any appropriate statement that the search areas required to examine the invention of Group I would not overlap into the search areas for examining the invention of Group II, and vice versa.

Applicant respectfully submits that the search for the combination of features recited in the claims of the above-noted groups, if not totally co-extensive, would appear to have a very substantial degree of overlap. Indeed, the Examiner has acknowledged that each Group would require searching in the same class, i.e., class 131. Furthermore, both groups of claims have a number of features in common such as a wrapping material strip and a conveyor path. Because the search for each group and species of invention is apparent substantially the same (for purposes of examination), Applicant submits that no undue or serious burden would be presented in concurrently examining Groups I-II. Thus, for the above-noted reasons, and consistent with the Office policy set forth above in

M.P.E.P. § 803, Applicant respectfully requests that the Examiner reconsider and withdraw the restriction requirement in this application.

For all of the above reasons, the Examiner's restriction is believed to be improper. Nevertheless, Applicant has elected, with traverse, the invention defined by Group II directed to claims 13-31, in the event that the Examiner chooses not to reconsider and withdraw the restriction and/or species requirement.

Please charge any additional fees necessary for consideration of the papers filed herein and refund excess payments to Deposit Account No. 19-0089.

Respectfully submitted,
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March 26, 2007
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